IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 11538 of 1994

Between:

Ch. Pedabapulu, S/o Sastrulu, 47 years, Asst. Executive Engineer, T.L.C, Visakhapatnam, Visakhapatnam District.

..... PETITIONER

AND

1. Andhra Pradesh State Electricity Board, rep. By its Member Secretary, Vidyuth Soudha, Hyderabad.

2. The Chairman, A.P.S.E. Board, Vidyuth Soudha, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, particularly one in the nature of writ of mandamus declaring the impugned proceedings in Memo No. DP/DM. V/100-R1/90-11 dated 28.4.1993 issued by the first respondent and the memo No. DP/DM. V/100-R1/90-10 dated 20-10-1993 issued by the second respondent confirming the orders of the 1st respondent as illegal, arbitrary and declaring that the petitioner is entitled to pay and allowances in full for the period of suspension from 7-1-1989 to 4-3-1991 and treating the said period as leave to which the petitioner is entitled is wholly illegal and arbitrary and pass such other order or orders as are deemed fit and proper.

Counsel for the Petitioner: MR.M.PANDURANGA RAO

Counsel for the Respondent No.1: MR.S.RAVINDRANATH

Counsel for the Respondent No.2: Mr. Samineni kishore SC for APSEB.

The Court made the following :

ORAL ORDER:

The proceedings of the second respondent dated 20-10-1993 confirming the order of the first respondent dated 28.4.1993 is the subject matter of challenge in this writ petition.

The first respondent, vide proceedings dated 28.4.1993, imposed the punishment of stoppage of one increment without cumulative effect on the petitioner while treating the period of suspension as leave to which he was eligible. As against the said order, the petitioner preferred an appeal and the second respondent, vide proceedings dated 20-10-1993, rejected the appeal holding that there was no reason to interfere with the punishment already imposed.

Since the relief sought for in this writ petition is to set aside the imposition of punishment of one increment without cumulative effect and in treating the period of suspension as leave, it is sufficient to note that the petitioner was found guilty of carrying on money lending business which was a misconduct under the regulations.

It is the case of the petitioner that there was no justification for the respondent to impose such a punishment, as the allegations held proved against the petitioner were merely technical in nature. He further contends that he was kept under suspension from 7.1.1989 till he was reinstated on 7.3.1991 and since a minor punishment has been imposed, the action of the respondent in treating the period of suspension as leave due to him was illegal, arbitrary and contrary to the applicable rules.

Insofar as the first contention regarding imposition of punishment is concerned, the

charge held proved against the petitioner was that he was carrying on money lending business, which is a misconduct under the regulations. The punishment imposed, for the charge held proved of stoppage of one increment without cumulative effect cannot be said to be a punishment, which shocks the conscience of this Court. Since the jurisdiction of this Court to interfere with the quantum of punishment is limited only to such rare cases where punishment imposed shocks its conscience, which is not the case herein, no interference is called for with regard to imposition of punishment on the petitioner.

The contention that the period of suspension being treated as leave due to the petitioner is contrary to the Rules, is however justified. The Government of Andhra Pradesh, in G.O. Ms. No. 182 Finance & Planning (FW.FR.II) Department Dated 31-10-1992 made necessary amendments to the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963, amending rule 54-B of the Fundamental Rules by insertion of Sub rule 5 thereto. Consequently Rule 54-B (5) reads thus:-

> *"Provided that where the departmental proceedings against an employee placed under suspension on or after 7.4.1992 for the imposition of a major penalty, finally end with the imposition of a minor penalty, then the suspension can be said to be wholly unjustified and such employee shall be paid full pay and allowances for the period of suspension by passing an appropriate order".*

It is clear from the rule so amended, that its application is restricted only to cases where an employee has been placed under suspension on or after 7.4.1992. Several cases seeking the benefit of these orders, relating to suspension periods prior to 7.4.1992, were brought to the notice of the Government and on examining the said matter and with a view to avoid miscarriage of justice, the Government decided to amend the Proviso to Sub rule 5 of F.R. 54-B suitably and, vide G.O. Ms. No. 59 dated 27.3.1995, omitted the expression "on or after 7.4.1992" in rule 54-B of the Fundamental Rules. As a result of the amendment made in G.O. Ms. No. 59 dated 27.3.1995, Rule 54-B (5) applies even to cases of suspension prior to 7.4.1992. Both G.O. Ms. No. 182 dated 31.10.1992 and G.O. Ms. No. 59 dated 27.3.1995 were adopted by the A.P. State Electricity Board in B.P. (P & G. Ser) Ms. No. 44 dated 20-5-1997 and they were made applicable to the employees of the A.P. State Electricity Board. In view of adoption of the said amendment made to

Fundamental Rule 54-B, making it applicable to employees of the A.P. State Electricity Board, in cases where a minor penalty is imposed, the period of suspension is to be regarded as wholly unjustified and the employee would be entitled to payment of full pay and allowances for the period of suspension.

The action of the respondents in treating the period of suspension of the petitioner as leave due to him is contrary to the rules referred to above and as such is set aside. The petitioner would be entitled to be paid full pay and allowances for the period of suspension after deducting the subsistence amount already paid to him.

In the additional affidavit now filed before this Court, the petitioner contends that during the period of his suspension two increments due to him were denied and that he is entitled for those two increments. Needless to state that if the petitioner is aggrieved thereby, he shall file a detailed representation before the first respondent within two weeks from the date of receipt of a copy of this order furnishing details of his claim regarding nonpayment of two increments during the period of his suspension. Upon such representation being made by the petitioner, the first respondent shall pass appropriate orders thereon within two months thereafter.

The writ petition is partly allowed. The respondents are directed to pay full pay and allowances to the petitioner during the period of his suspension after deducting the subsistence allowances already paid to him, within two months from the date of receipt of a copy of this order. No costs.

2005. **RAMESH RANGANATHAN, J.**

Kvsn

To

1. Andhra Pradesh State Electricity Board, rep. By its Member Secretary, Vidyuth Soudha, Hyderabad.
2. The Chairman, A.P.S.E. Board, Vidyuth Soudha, Hyderabad.
3. Two CCs to The Standing Counsel, APSEB, High Court buildings, Hyderabad.,
4. Two CD copies.